

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.  
on the 9th day of April, 1992

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BARRY LAMBERT HARRIS,  
Acting Administrator,  
Federal Aviation Administration,

Complainant,

Docket SE-10023

v.

THOMAS M. EARNHART,

Respondent.

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OPINION AND ORDER

The Administrator has appealed from an initial decision of Administrative Law Judge Jerrell R. Davis, issued orally at the conclusion of an evidentiary hearing held on September 14, 1989.<sup>1</sup> By that decision, the law judge reversed an order of the Administrator suspending respondent's airline transport pilot (ATP) certificate for 15 days for an alleged violation of section 91.9 of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part

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<sup>1</sup>An excerpt from the transcript containing the initial decision is attached.

91) stemming from the landing of a passenger-carrying flight at the wrong airport on December 19, 1987.<sup>2</sup> In reversing the order of suspension, the law judge found that respondent, who was acting as first officer and flying the aircraft at the time of the incident, had relied upon the pilot-in-command, who was serving as the non-flying pilot, to properly monitor the aircraft's navigational aids. The law judge attributed the landing at the unintended destination solely to the captain's failure to properly perform his navigational duties and found no carelessness on respondent's part.<sup>3</sup> Thus, he determined that respondent could not be held liable for the FAR violation alleged.

In his appeal brief, the Administrator maintains that respondent must share in the responsibility for the landing at the wrong airport. In this regard, he asserts that respondent could have, through various means, independently verified whether the aircraft was nearing its intended destination prior to the landing, and that his reliance on the captain's identification of the airport without such action was unreasonable.

Respondent has submitted a reply brief in which he urges the Board to affirm the initial decision.

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<sup>2</sup>FAR § 91.9 as was then in effect provided:

"§ 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

<sup>3</sup>In this case, the Administrator charged respondent only with carelessness (and not recklessness) in alleging a violation of FAR § 91.9.

Upon consideration of the briefs of the parties and the entire record, the Board has determined that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order in its entirety. We will, therefore, grant the Administrator's appeal.

The essential facts of this case are not in dispute. The flight in question was a nighttime instrument flight rules (IFR) flight, which originated at Los Angeles International Airport and was scheduled to land at San Luis Obispo Airport, with Santa Maria Airport as its final destination. As indicated above, respondent was the first officer, and operated the controls of the aircraft from the right seat, while the captain, as the non-flying pilot, was handling the flight's navigation and communications. After visual identification of what was believed to be San Luis Obispo Airport from several miles out,<sup>4</sup> the captain requested and received clearance from air traffic control (ATC) for a visual approach into that airport. However, the crew had mistaken Santa Maria for San Luis Obispo, and, as a result, landed there instead.

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<sup>4</sup>The airport was initially identified as San Luis Obispo by the captain from approximately 22 nautical miles (NM) out. It was off to the left of the flight path and, therefore, not visible to respondent from the right seat. At a point about 3 NM out, the captain again asked respondent if he could see the airport and respondent replied that he could not. Respondent then briefly relinquished the controls of the aircraft in order to stand up and take a look at the airport for himself. Tr. 233. Based on that view and the captain's identification, respondent was satisfied that the airport he saw was San Luis Obispo. Id. 231-32.

San Luis Obispo is located more than 20 NM to the northwest of Santa Maria. The aircraft was flying in a northwesterly direction at the time of the incident, and was to pass Santa Maria on its way from Los Angeles to San Luis Obispo.<sup>5</sup> San Luis Obispo is served by the Morro Bay VOR, which is located about 4 NM west. of that airport and approximately 26 NM northwest of Santa Maria. At the time in question, the aircraft's distance measuring equipment (DME) was tuned to the Morro Bay VOR and its localizer instrument was adjusted to the San Luis Obispo frequency. Thus , although the two airports were visually similar at night ,<sup>6</sup> there were on-board means of distinguishing them from each other and determining that the airport being approached was not in fact San Luis Obispo.

At the hearing, respondent related that he had previously flown into both San Luis Obispo and Santa Maria at night on several occasions, and was aware of the similarities between those airports under nighttime conditions. He also related that he was familiar with their relative positions, that he knew Santa Maria would be passed on the way from Los Angeles to San Luis

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<sup>5</sup>See Ex. C-3.

<sup>6</sup>San Luis Obispo Airport and Santa Maria Airport each have one lighted runway, which run in approximately the same direction and are lit in a similar manner. Tr. 62-63, 65. The airports also have similar flashing beacons. Id. 50. Additionally, both airports have control towers located around midfield on the north side of their lighted runways, and operations facilities are found to the north of those runways. Id. 63. Each airport is also situated to the south of the city it serves. Id. 68.

Obispo and that he would "probably" have expected that, if San Luis Obispo had been seen, Santa Maria would have been, as well.<sup>7</sup> Respondent further disclosed that his confirmation of the captain's identification of the airport as San Luis Obispo<sup>8</sup> consisted of a two-to-three second observation of a beacon and one-half of a runway.<sup>9</sup> In view of the known similarities between the airports, the Board believes that such a limited verification was not reasonable. In our opinion, a prudent pilot would have also asked the captain if he had observed Santa Maria being passed en route. Moreover, respondent could have taken further independent steps to determine whether his aircraft was in fact approaching its intended destination.

In this regard, we have noted that the captain was alerted to the fact that the aircraft might not be approaching San Luis Obispo when he failed to receive the localizer Morse code identifier beep prior to final approach. Additionally, he had observed that the course deviation indicator (CDI) on his side of the instrument panel was displaying "off flags," which also signified that the San Luis Obispo localizer had not been intercepted. Although he attempted to inform respondent of such matters over the cockpit microphone ("hot mike"), such communications were not received because he had failed to turn

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<sup>7</sup>Tr. 229.

<sup>8</sup>see n.4, supra.

<sup>9</sup>Tr. 231-33, 245.

the hot mike on.<sup>10</sup> The record also reflects that the captain neglected to provide respondent with a DME readout. Respondent has testified that he expected to hear from the captain only if something was amiss--thus, not having heard of any navigational disparities, he assumed that there were none and proceeded with the landing.<sup>11</sup>

According to respondent, three-to-five minutes elapsed between the time he began his descent on a high downwind approach and the time he turned base.<sup>12</sup> Thus, he had at least that amount of time to independently confirm the identity of the airport through navigational aids prior to directing his attention exclusively outside the cockpit in connection with his final approach. We therefore believe that respondent had ample time to have asked the captain for a DME reading and to have requested that he confirm interception of the San Luis Obispo localizer. Had respondent done the former, he would have known that the aircraft was further from the Morro Bay VOR than was to be expected on an approach to San Luis Obispo, and had he done

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<sup>10</sup>Respondent has related that he was unaware of this hot mike problem, which resulted from the captain's failure to operate the microphone control switch properly, until final approach, when he expected to hear the captain call out altitudes and airspeeds, but heard nothing. Tr. 209-10, 217, 219. At that point, respondent leaned over and turned on the hot mike. Id. 219-20.

<sup>11</sup>Respondent indicated that he would not have continued his approach if he had been aware of any navigational problems. See Tr. 201, 213.

<sup>12</sup>Tr. 236. Respondent had commenced his descent about 30 seconds after he visually checked the airport for identification. Id. 235.

the latter, he would have been apprised that the airport he was approaching was likely not San Luis Obispo. In either case, had he received no response, he would have been alerted to the fact that there was a hot mike problem and, thus, would have been in a position to have asked the captain to repeat any communications he might have missed. This, in turn, may have prevented him from landing at the wrong airport. Clearly, respondent's "no news is good news" approach was not a reasonable one under the circumstances.<sup>13</sup>

In addition, the Board has noted that respondent's aircraft had a second CDI, which was located on the right side of the instrument panel.<sup>14</sup> Respondent has testified that he looked at that instrument "to confirm [his] visual approach and noticed that [its] needles were centered and crossed," which, he believed at the time, indicated that the San Luis Obispo localizer was being received.<sup>15</sup> While the law judge cited such testimony in support of his decision, we must note that respondent further stated that the needles would also appear centered and crossed if that instrument was not operating, and related that he did not see the "flag" indicating that the CDI was off because his view

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<sup>13</sup>This is especially so where, as here, respondent is an ATP certificate holder and, thus, is "held to the highest degree of care" in operating his aircraft. Administrator v. Ferguson and Bastiani, 3 NTSB 3068, 3070 (1980), affirmed 678 F.2d 821 (9th Cir. 1982) (also involving a wrong airport landing).

<sup>14</sup>See Exs. R-2, R-3.

<sup>15</sup>Tr. 248.

of that "flag" had been obstructed by his yoke.<sup>16</sup> We are of the opinion that respondent should have taken steps designed to assure himself that his CDI was in fact turned on, including looking around the yoke for the off indicator "flag," before determining that the CDI confirmed the interception of the San Luis Obispo localizer, and we therefore believe that his actions did not reflect the degree of diligence expected of a prudent pilot.

In view of the above, the Board must conclude that the landing at Santa Maria instead of San Luis Obispo was, at least in part, a result of respondent's carelessness. In this regard, we note the citation by the law judge, in his initial decision, and respondent, in his brief, of Administrator v. Coleman, 1 NTSB 229 (1968) and Administrator v. Thomas, 3 NTSB 349 (1977). While the Board held in those cases that there are instances in which one crewmember may justifiably rely upon information provided by a fellow crewmember, neither of those cases is applicable to the present factual situation. In those cases, the flying pilots either did not hear or did not understand ATC instructions and, upon checking with their co-pilots, were provided with readbacks of such instructions that proved to be incorrect. As the co-pilots in those cases were responsible for communications with ATC, the Board found that the flying pilots' reliance on the information they provided was justified. While it has been posited here that, as the captain was responsible for navigation

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<sup>16</sup> Id.



of the aircraft, respondent stands in the same position as the flying pilots in Coleman and Thomas, such a view ignores the fact that, despite knowing of the similar appearances of San Luis Obispo and Santa Maria under nighttime conditions, respondent did not ask the captain to verify his visual identification of the airport through readily available information from the DME and localizer or confirm that Santa Maria had already been passed in flight. Moreover, that view disregards respondent's failure to take an adequate look at the airport or to assure himself that the CDI he was relying on for confirmation of the airport's identity was in fact turned on.

Turning to the issue of sanction, the Board is of the opinion that the 15-day suspension of respondent's ATP certificate which was ordered by the Administrator is not unreasonable in view of the violation charged and the lack of care that has been demonstrated.<sup>17</sup> Consequently, we believe that the suspension ordered should be reinstated.

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<sup>17</sup>See Administrator v. Ferguson and Bastiani, supra n.13 (30-day suspension ordered by Administrator against first officer operating flight controls in wrong airport landing incident upheld where inattention and failure to use available navigational information gave rise to finding of recklessness); Administrator v. Helter, Strong and Zane, 5 NTSB 826 (1985) (120-day suspension ordered against pilot-in-command and 90-day suspension ordered against first officer reinstated in case of recklessness leading to landing at wrong airport).

**ACCORDINGLY , IT IS ORDERED THAT:**

1. The Administrator's appeal is granted;
2. The law judge's initial decision is reversed and the Administrator's order is affirmed; and
3. The 15-day suspension of respondent's ATP certificate shall begin 30 days from the date of service of this order.<sup>18</sup>

COUGHLIN, Acting Chairman, LAUBER, KOLSTAD, HART, and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>18</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).